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S E C R E T SECTION 01 OF 05 BEIRUT 000002

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NSC FOR ABRAMS/DORAN/MARCHESE/HARDING

E.O. 12958: DECL: 01/02/2027
TAGS: [PTER](#) [PREL](#) [KCRM](#) [LE](#) [SY](#)
SUBJECT: OPTIONS FOR THE TRIBUNAL

Classified By: Jeffrey Feltman, Ambassador, per 1.4 (b) and (d).

SUMMARY AND COMMENT

1. (S) As the Christmas-New Year and 'Eid al-Adha holidays come to an end, the Lebanese seem no closer to completing the approval process for the Special Tribunal for Lebanon. None of the options available to the GOL guarantee success; most ideas are unrealistic. Within GOL circles, there is growing support for a proposal that a petition signed by 70 Members of Parliament accompany a GOL request to the UNSC to approve the tribunal documents. The petition is designed to show that Lebanon's parliament would have readily approved the documents officially, had the chamber been permitted to meet.

While we defer to others about potential UNSC reactions, this is probably the best option locally. We believe that, if the GOL proceeds in this direction, the GOL should also proceed with two additional steps in parallel: first, GOL and March 14 representatives should continue to try to corner March 8-Aoun representatives into a dialogue on the specific concerns regarding the tribunal. (This is to show that March 14 forces are open to discussion and desire the broadest possible support for the tribunal; we don't expect the others to respond.) Second, the GOL -- before more cabinet ministers are killed or resign -- should ask the UN now to extend the UNIIIC (Brammertz Commission) for another year beyond its June expiration, in case the tribunal is not yet ready to take charge of the case by then. A new cabinet, such as the 19-10-1 formulation proposed by Amr Moussa, would not have the strength to push through a request for extension of the UNIIIC. Minister of Justice Charles Rizk also mused about a secret trip to Damascus to solicit Syrian views on textual changes to the tribunal documents, but we believe that Rizk's Lebanese colleagues will successfully dissuade him of this idea. End summary and comment.

TRIBUNAL DOCUMENTS THEORETICALLY
BEFORE PARLIAMENT, AWAITING SIGNATURE

2. (C) Over the past week, we have met with a large number of GOL officials and MPs to discuss the options available regarding the two pending and intrinsically connected tribunal documents, the "Agreement Between the United Nations and the Lebanese Republic on the Establishment of a Special Tribunal for Lebanon" and the "Statute of the Special Tribunal for Lebanon." Both documents were approved by the cabinet on November 13 (two days after the five Shia ministers resigned and a few hours after the sixth minister, Yacoub Sarraf, also quit) and then re-approved on December 12, when the cabinet overrode President Lahoud's rejection of the documents. According to Minister of Justice Charles

Rizk, who met with the Ambassador on 12/30, the cabinet will authorize signing of the documents as soon as an authorized copy is prepared in Arabic. (The current Arabic text is "full of sloppy mistakes," Rizk claimed.)

13. (C) Constitutionally, Lebanon's parliament should ratify the two documents. But Lebanon's parliament went out of its regular session on December 31 and does not reconvene until mid-March. While Article 33 of Lebanon's constitution sets forth ways by which an extraordinary session is summoned (including a call by the majority of the members, which March 14 enjoys), Parliament Speaker Berri is threatening that Shia and Aounist MPs will resign from the parliament if he is forced to call for a session. Among the pro-Syrian-Aounist protesters, of course, there are those who argue that even the cabinet approval of the tribunal documents must be repeated before a new cabinet, since, in their interpretation, Siniora's cabinet because illegitimate with the Shia resignations.

SEVEN POSSIBLE APPROACHES (NONE IDEAL)

14. (S) Based on our talks with Prime Minister Fouad Siniora, Minister of Justice Charles Rizk, Acting Minister of Foreign Affairs Tariq Mitri, Minister of Communications Marwan Hamadeh, Minister of Social Affairs Nayla Mouawad, MP Saad Hariri, MP Walid Jumblatt, MP Boutros Harb, and former MP Nassib Lahoud, we believe that GOL/March 14 forces have several options available as they try to move the tribunal forward. None of the following are ideal:

-- Postpone completion of the approval process for the tribunal documents, pending improvement in the domestic

BEIRUT 00000002 002 OF 005

political climate, While some March 14 members believe that pushing the tribunal documents so hard right now unwisely provokes the Syrians into "destroying Lebanon," most reject an indefinite postponement as, essentially, a reward for Syrian bad behavior. People recognize that postponing the tribunal documents could lead to indefinite delay, or at least delay until the cabinet has been forcibly altered to be more favorably inclined towards Syrian interests, at which point the documents could be changed beyond recognition, in order to gut the tribunal's potential effectiveness.

-- Engage the March 8-Aoun representatives to address the specific concerns about the tribunal documents. In the abstract, this is an attractive option that, if successful, would lead to a broader acceptance of the tribunal locally. Some speculate that two changes in the texts would address most of the pro-Syrians' concerns -- Article 2 in the statute regarding superior-subordinate relationship (especially point b, "the crimes concerned activities that were within the effective responsibility and control of the superior"), and the language in both the agreement and the statute regarding linkages between the Hariri assassinations and other crimes. Some argue that relatively easy fixes could address these concerns, such as by listing specifically the crimes that could be linked (to address alleged fears that the tribunal could end up trying any case, no matter how marginal the connection to Hariri's assassination). But most people are suspicious -- rightly, we believe -- that March 8-Aounist representatives are not really interested in adjusting the documents, hoping instead to jettison the tribunal altogether. So we do not believe that this option would lead to constructive discussion, as March 8-Aounist representatives are unlikely to offer specific points of concern. (Amr Moussa's proposal for a six-person commission to examine the tribunal falls under this option and assumes a good faith on all parts to come up with technical fixes -- good faith we suspect is lacking among March 8-Aounist forces.)

-- Renegotiate the two texts with the UN to remove those

parts (multi-year commitment and financial obligations) that trigger the need for parliamentary approval, so that the cabinet approval alone is sufficient. Minister of Justice Rizk, once an advocate of this approach, now opposes it, based on the advice of Judge Choukri Sadr, one of the judges who worked with UN/OLA on the texts. The problem, Rizk explained, is that reopening negotiations permit President Emile Lahoud to enter the process, per Article 52 of the constitution (which gives the President the right to "negotiate and ratify international treaties in agreement with the Prime Minister"). By presiding over a cabinet meeting that unanimously authorized Rizk to negotiate the tribunal drafts, Lahoud thus willingly gave his Article 52 authority to Rizk for the original drafts. But Rizk is convinced that Lahoud -- backed by Hizballah, Michel Aoun, and other pro-Syrians -- would no doubt seize the reopening of the drafts to reassert his Article 52 authority. They would claim that those who oppose Lahoud's Article 52 authority are intentionally trying to undermine the authority of the Christian office of the presidency. (We agree with Rizk's analysis.) The preceding option, about trying to elicit the specific concerns of the March 8-Aounist representatives about the tribunal, could also lead to the Article 52 problem. But, if Hizballah signed onto specific textual changes, Lahoud probably would as well.

-- Force the parliament to meet under Deputy Speaker Farid Makkari (a member of Hariri's Mustaqbal bloc). Under this scenario, if Berri continues to balk at opening a special session of parliament despite a majority-backed demand for such a session, the 70 March 14 MPs -- enough to make a quorum -- would simply occupy the parliament building, with Makkari presiding and declaring the extraordinary session open. The more radical March 14 members, including (intermittently) Walid Jumblatt and Marwan Hamadeh, talk favorably about forcing action in this way. Others see this as an unnecessary provocation of the Shia (who are camped out in their sit-in only a few steps away and could easily be mobilized to storm or besiege the parliament). The skeptics note that Christian concerns prevented a March 14 storming of the Baabda Presidential Palace in spring 2005, and Sunni concerns have (so far) prevented the March 8-Aounist demonstrators from carrying out their threat to storm the Grand Serail seat of the Prime Minister. The Shia would be equally outraged by a March 14 frontal attack on the parliament, seen by virtue of the Shia speakership as a Shia institution in the same way Baabda is seen as a Christian

BEIRUT 00000002 003 OF 005

institution and the Grand Serail a Sunni stronghold.

-- Rely on UN Security Council members to approve the tribunal unilaterally, under Chapter VII. Wistful as many Lebanese are about the possibility of having this decision taken out of Lebanon's hands, most people understand that this option is unrealistic and likely to provoke unhelpful Russian and Chinese reactions. They are also aware that renegotiating the current texts to turn the tribunal into a Chapter VII-created institution will require months.

-- Have PM Siniora send a letter to the UNSC asking for Chapter VII action. This is a slight improvement on the above, as at least the UNSC would have some justification for acting unilaterally.

-- Send a petition signed by 70 members of Lebanon's parliament along with Siniora's letter asking for the UNSC to approve the tribunal. This would show that sufficient parliamentary support for the tribunal exists and that, if only Berri would call the parliament, the tribunal documents would readily be adopted. With the Lebanese inclined to cite political history in making their points, laying down a historical marker by 70 signatures may prove important in the future.

GROWING CONSENSUS FOR PETITION

15. (S) It is our impression that the March 14 and GOL leaders are generally leaning toward the last option -- to send to the UN a letter from PM Siniora and a petition from 70 MPs asking that the UNSC adopt the tribunal. We defer to our colleagues in New York and Washington as to the likely reactions of UNSC members and UN officials. If there are messages we should send regarding this approach, we need to do so quickly, as the cabinet might move in this direction as early as Thursday night, January 4.

TRYING TO KEEP DOOR OPEN
FOR BROADER CONSENSUS

16. (S) While emphasizing that we have no instructions from Washington regarding USG reaction to the petition idea, we are privately recommending to our contacts two additional steps in parallel. First, in our view, GOL and March 14 leaders should be aggressive and visible in trying to get the March 8-Aounist leaders to engage on their specific concerns regarding the tribunal documents, per the second option in para 4 above. Since Lebanon's political leaders collectively approved the principle of the tribunal in the March 2 National Dialogue session, March 14-GOL leaders should be seen as open to consideration of small modifications to the text that do not change the substance of the tribunal. This is the only way to know for sure whether the opposition is merely shielding Syria or whether they can eventually accept the tribunal with some changes. It may be the only way to arrive at a tribunal which will enjoy wide Lebanese consensus. Yet, realistically, we do not believe that March 8-Aounist leaders will respond. So this gesture is primarily designed to show that March 14-GOL leaders seek a broad consensus and that the March 8-Aounist refusal to engage is responsible for the fact that none emerged. Used wisely by March 14 leaders, an attempt to engage in serious dialogue could embarrass the March 8-Aounist forces.

ASKING NOW FOR UNIIIC EXTENSION

17. (S) Second, we believe strongly that, whatever happens with the tribunal, Siniora's cabinet should request the UN now to extend the mandate of the UN International Independent Investigative Commission (UNIIIC) for another year or, if a more open-ended commitment is possible, until such time as the Special Tribunal is established and can take over the UNIIIC's investigative work. As it stands now, the Brammertz Commission expires in June. It does not seem likely that the Special Tribunal will be up and running by then. If the Siniora cabinet has collapsed -- whether due to the murder or resignation of only two ministers, because of street protests, due to a compromise, or in response to other actions -- it could very well be replaced by a cabinet more favorably inclined toward Syria's interests.

18. (S) Even Amr Moussa's proposed 19-10-1 cabinet could

BEIRUT 00000002 004 OF 005

prevent the renewal of the UNIIIC for another year, as March 14 forces would have abdicated their two-thirds supermajority needed to override presidential vetoes even on those cabinet decisions initially requiring the approval of only a simple majority. Thus, we are strongly encouraging Siniora and his ministers to ask for the UNIIIC extension now. We have discussed this with the French and Saudi ambassadors, who fully agree. (We also hope that people in New York are already thinking about the replacement for Brammertz, in case he is serious this time about leaving in June. We don't want or need a last-minute problem that results in a gap in the leadership of the UNIIIC at a critical time.)

RIZK ARGUES FOR TALKING TO THE SYRIANS

¶9. (S) In his 12/30 meeting with the Ambassador, Minister of Justice Rizk argued that, at some point, someone needs to talk quietly with the Syrians about the tribunal documents. He volunteered himself. Admitting that he feels that the tribunal is "my baby," Rizk said that he is tired of probing Hizballah officials, without success, on their real concerns regarding the texts. It is time to leapfrog the subcontractors and go straight to Damascus, Rizk said. If some slight changes to the texts make them acceptable to all, so much the better. Someone needs to test the Syrians.

¶10. (S) While emphasizing that U.S. expertise regarding Syria resides in Embassy Damascus and Washington, the Ambassador made three remarks. First, multiple foreign visitors to Damascus have raised the tribunal, giving the Syrians the opportunity to make remarks. They refuse to talk about the tribunal. Second, the Syrians would likely see a Lebanese VIP visitor as a sign of Lebanese weakness and that the pro-Syrian intransigence in Lebanon is working. Lebanon's pro-Syrians thus might escalate rather than retreat. Third, the Syrians, just like their allies in Lebanon, are probably not going to provide specific proposals for changes to the text. Responding ambiguously, they would have more interest in a process that drags on indefinitely, in hopes that momentum for the tribunal eventually peters out.

¶11. (S) Rizk, looking unconvinced, repeated that he thinks that it would be "worth it" to test the Syrians via a secret trip to Damascus. The Ambassador cautioned him not to allow himself to be used in ways that damaged his credibility locally, particularly given his presidential ambitions. Rizk said that he would do nothing without the explicit support of Hariri, Jumblatt, and Siniora. He stated his intention to explore the idea with them. "Will you support me?" he asked. The Ambassador said that USG support would be unlikely. (We are certain that Hariri et al. will talk Rizk, who would need their support to realize his presidential ambitions, will talk him out of a trip to Damascus.)

COMMENT

¶12. (S) Whatever the rhetorical demands, most people believe that Hizballah-dominated demonstrations in downtown Beirut are primarily linked to a Syrian demand to derail the tribunal. We agree. (While no member of the Rafiq Hariri fan club, Michel Aoun surely joined his forces to the demonstrators for other reasons. But the Aounist component in the ongoing sit-in, while symbolically important to give Christian cover to what would otherwise be a transparently Shia movement, is relatively modest in size compared to the numbers Hizballah can muster.) As a result of the demonstrations, there are no good options for approving the tribunal documents, especially since the pro-Syrians and Aounists insist that Siniora's cabinet is illegitimate. We do not know what the reaction in New York will be if, as we expect, a petition signed by 70 MPs accompanies the tribunal documents to the UN. But, locally, this option makes the most sense, as the parliament has not been as vilified as Siniora's cabinet by the pro-Syrians.

¶13. (S) Given the enormous impact of the fuss over the tribunal on Lebanon's domestic politics and economy, we certainly hope that Brammertz is developing strong investigative files. Lebanon's current political fight stems from the collective assumption that the tribunal will be able to deliver credible indictments against high-ranking officials who were part of the Syrian occupation of Lebanon. We expect that to be the case. Yet if it ever appears as though there is no meat on the bones of the Brammertz investigation, then increasing numbers of people will start

BEIRUT 00000002 005 OF 005

to ask awkward questions about whether it is worth fighting

the battle over the establishment of the tribunal with such urgency. Such questions are already being raised (along the lines of "is it worth allowing Lebanon to be destroyed for the sake of the tribunal") but, so far, only infrequently.

FELTMAN